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Review of Lisa Herzog's 'Just Financial Markets?'

Lisa Herzog, *Just Financial Markets? Finance in a Just Society*, (Oxford: Oxford University Press, 2017), 348 pages. ISBN: 9780198755661. Hardback: 60£.

This anthology is a very valuable and welcome contribution to the literature on justice of financial markets. It takes on a number of important questions related to financial markets from both philosophical, legal and economic perspectives. The core question of the volume is whether we can trust the textbook stories about the self-regulating forces of the free market. Based primarily on an analysis of the Great Financial Crisis in 2008, the contributors of this volume answer this question in the negative. The self-regulating features of the free market cannot capture what is at stake in understanding and regulating financial markets, according to the contributors. This volume is not only a second-guessing critique of status quo, though. The contributors offer a range of original potential institutional reforms.

The volume is separated into three parts. The first part, consisting of four chapters, discusses a range of normative frameworks for evaluating financial markets, which go beyond the usual free market approach. The second part, also consisting of four chapters, discusses the legal frameworks of financial markets, and in particular, how these frameworks failed to prevent injustices during the Great Financial Crisis. The final four-chapter part zooms in on particular financial institutions and discusses how they influence justice.

The first part starts with chapter 2. In this chapter, Rosa Lastra and Alan Brener argue that implementation of both hard- and soft laws in financial markets must be grounded in the very legitimacy of these markets. And, this legitimacy depends in turn on the way financial markets effectively promote human rights (p. 40). In chapter 3, Rutger Claassen discusses the regulation of financial markets through the lenses of the so-called 'capability approach' to justice, as it has been developed by Amartya Sen, Martha Nussbaum and others. Claassen focuses primarily on two distinct capabilities. What he calls financial literacy, which allows consumers to adequately evaluate relevant offers on the market, and political capabilities, which allows citizens to develop a counterweight to the lobbying of financial corporations (p. 73). In chapter 4, Seumas Miller '... discuss various currently influential normative theories of markets and market-based institutions, and reject them' (p. 79). He then argues that we should evaluate financial markets in accordance with the broader purpose that they *should* have. In chapter 5, the editor Lisa Herzog discusses whether any reward gained in financial markets can be 'deserved'. Herzog is very skeptical about this view. She argues that any reward in financial markets is deserved, if one 'plays by the rules', and, these rules are just. She identifies a number of market failures in financial markets, and therefore, she argues, the rules are unjust, and thus the rewards gained in financial markets are often unjust too.

The second part opens with chapter 6. In this chapter, Mark Reiff sets out to explain why '... the attitudes of the public and the public prosecutor about what justice requires here have gotten so out of sync..' (p. 127), when it comes to serious wrongdoing in financial markets. Reiff argues that courts should in fact put more weight on the moral responsibility of the individuals who harm others through financial means. In chapter 7, Jay Cullen argues that action needs to be taken to avoid that bankers take extreme risks in financial markets, or engage in outright exploitation. Cullen argues that greater personal sanctions and greater personal liability is necessary to solve this problem. In chapter 8, Katharina Pistor argues that the rules of the financial markets are biased in a way that

benefits those at the top of the hierarchy, at the expense of those at the periphery. In chapter 9, Aaron James discusses the practices of giving foreign firms a special legal privilege against the government when they invest, through the investor-state dispute settlement (ISDS). Normally, taking a risk is a crucial part of investment. So, the fact that certain firms can now have special legal privileges that reduces the risk these firms have to take, amounts to, as the title of the chapter says: ‘investor rights as nonsense – on stilts’.

The final part opens with chapter 10. In this chapter, Peter Dietsch discusses how central banking affects justice in general. He argues, among other things, that ‘... unconventional monetary policy instruments of the kind employed today have an exacerbating impact on inequality in income and wealth.’ (p. 246). In chapter 11, Boudewijn de Bruin argues that credit-rating agencies do not succeed in achieving justice in financial markets, to the extent that many commentators think they do. In chapter 12, Roseanne Russell and Charlotte Villiers argue against the idea that there is a business case for gender representation in corporate boardrooms and executive boards. The argument is not that gender equality cannot be profitable for companies. Rather, the argument is that the business case argument in favor of gender representation is normatively and theoretically inferior to the equality argument. Finally, in chapter 13, Anat Admati sets out to show that the Great Financial Crisis was, to a large extent, possible because several people, Admati calls them ‘enablers’, had incentives to take extreme risks and to avoid speaking up about potential pitfalls.

Even though each chapter deserves a thorough treatment, I will only make a few general points about the volume, and then engage in a more substantive discussion about one specific chapter.

The volume in its entirety is clearly written, crisp and most often goes right to the point in each chapter. It is also a big advantage that it discusses justice of financial markets through several lenses. Often, when philosophers discuss how something relates to justice, it is done in a highly idealized and often very narrow manner, where philosophers often ignore the fact that other disciplines have many insights on the subject. That is not the case for this volume. This volume demonstrates very well how a multidisciplinary anthology should be put together.

It is a bit surprising how little the contributors discuss the role of states and governments in relation to the Great Financial Crisis. Bail outs are discussed several times, and the contributors seem to agree that the fact that some banks are ‘too big to fail’ is a problem. The remedy to this problem seems unequivocally, according to the contributors, to be to push for *more* regulation, and *more* government action. For what it is worth, ‘market failure’ is mentioned several times in the General Index in the back of the book, while ‘government failure’ is not mentioned once.

Let me now make a small point about a specific chapter in the book, namely the editor Lisa Herzog’s own chapter. At p. 112, Herzog argues that financial markets are different from most other markets where high incomes also occur. She argues that, *ceteris paribus*, it is worse when someone earns a high income in financial markets than in markets with a higher degree of voluntariness, because people depend on financial markets, directly or indirectly. Since people depend on financial markets, we do not know if a high willingness to pay in these markets is due to “...a genuine appreciation of the goods or services in question, rather than a lack of alternatives” (p. 112). Although it may be true that there is a lower degree of voluntariness in financial markets than in certain other markets, it is not completely clear to me how this, *ceteris paribus*, makes high incomes earned in financial markets worse than high incomes earned in other markets, where voluntariness is higher. Markets in food, for example, have at least in some sense an even lower degree of voluntariness than financial markets do. Everyone must eat. But, it is hard to see why high incomes earned in food markets are *ceteris paribus* worse than high incomes earned in markets in sports and

movies, to take Herzog's own examples. If anything, since Herzog discusses desert, it seems that high incomes earned in sports and movies should be *less* deserved than high incomes earned in food markets are. As long as supply is high, which is often the case in markets with low voluntariness (because there will be great demand), the potential problem of involuntariness which Herzog points to, becomes less important.

Despite the disagreements described above, I think this volume will be worth the read for anyone who is interested in the ethics of financial markets. The volume is accessible for people who are not specialists in the fields of philosophy, law or economics. The chapters are very original and insightful, and specialists as well and non-specialists are likely to learn a lot from this volume. If the reader is interested in a different, more market-friendly approach to the issues raised in this volume, Loren Lomasky's 2011 paper 'Liberty After Lehman Brothers' is highly recommended (Loren Lomasky, Liberty After Lehman Brothers, *(Social Philosophy and Policy* 28 (2):135-165, 2011).

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